

9 OCT 1984

Thomas M. McMahon, Esq.  
Sidley & Austin  
One First National Plaza  
Chicago, Illinois 60603

Re: Ventron/Velsicol

Dear Mr. McMahon:

Thank you for your letter of September 27, 1984. It accurately reflects the substance of our conversation of September 25.

You requested that we confirm our designation of the New Jersey Department of Environmental Protection ("NJDEP") as the "lead" agency for the carrying out of enforcement efforts at the Ventron/Velsicol site pursuant to Section 300.68 of the National Contingency Plan. Such a designation was, indeed, made by mutual agreement of this agency and the NJDEP about a year ago, at the time the site was proposed for inclusion on the National Priorities List. This letter will serve to confirm that designation, which remains in effect.

As I advised you, we will review the proposed settlement between NJDEP and Ventron/Velsicol, and we will review subsequent sub-missions made pursuant to the terms of that settlement, as provided in the draft CERCLA Enforcement Protocol between our two agencies (of which I gave you a copy during your visit). That Protocol will continue to govern the relationship between NJDEP and ourselves. I trust this answers any outstanding questions you may have had.

Sincerely yours,

Walter E. Muggdan  
Chief  
Waste & Toxic Substances Branch  
Office of Regional Counsel  
cc: Gerard Burke, Esq.  
Assistant Director  
Office of Regulatory Services  
New Jersey Department of  
Environmental Protection

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September 27, 1984

Walter E. Mugdan  
Chief, Waste & Toxic Substances Branch  
Office of Regional Protection Agency  
Region II  
26 Federal Plaza  
New York, NY 10278Re: Ventron/Velsicol

Dear Mr. Mugdan:

This will confirm our discussions on September 25, 1984 in your office.

We represent Velsicol Chemical Corporation. We do not represent Ventron (Morton Thiokol, Inc.), although I have reported to it the results of our meeting and believe it to be in general agreement with Velsicol.

For several months, we have been engaged in negotiations with the New Jersey Department of Environmental Protection in order to finalize a Stipulation to perform a cooperative RI/FS at the above-referenced site. A key issue in those negotiations has been obtaining U.S. EPA approval of the Stipulation and work pursuant to CERCLA.

Until very recently, U.S. EPA was not involved in the negotiations. However, we understand that the site has (within the past few weeks) been added to the National Priorities List (although I have not as yet seen a Federal Register announcement). In addition, by letter dated September 19, 1984 U.S. EPA advised Velsicol that it intended to take action at the site pursuant to CERCLA. These two actions by U.S. EPA underscore the need to obtain appropriate U.S. EPA approvals of any CERCLA-related actions among NJDEP, Velsicol and Ventron.

Walter E. Mugdan  
September 27, 1984  
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You advised me that U.S. EPA Region II and NJDEP were handling this site pursuant to a "CERCLA Enforcement Protocol," a copy of which is attached hereto. You further advised that, while this protocol has not been officially executed by either party, it nonetheless represents the de facto operating procedures between the two agencies.

In accordance with that protocol, you advised that NJDEP has the "lead enforcement role" regarding this site. You further advised that (pursuant to the protocol) settlements of enforcement cases will be bilateral rather than trilateral. While the protocol provides for exceptions from this general principle, you stated that you did not believe the Region would exercise such discretion in this case.

I advised you that Velsicol's problems were not so much with the enforcement mechanisms per se, but rather with assuring that actions taken at the site would be deemed consistent with the National Contingency Plan. There are three reasons for this concern:

1. Most obviously, since it is fundamental that the study meet the requirements of CERCLA and the NCP, a mechanism is necessary whereby both NJDEP and Velsicol know that the study actually conforms to such requirements. Otherwise, we fear a repeat of unfortunate situations which have occurred in other Regions where studies are forced to be redone because of late-in-the-game disagreements between USEPA and the "lead" State.
2. Consistency with the National Contingency Plan may be a prerequisite to contribution actions under CERCLA.
3. Consistency with the National Contingency Plan may be a prerequisite in connection with CERCLA Section 107(d).

These problems could be resolved if the Region would exercise its discretion and enter into a trilateral agreement, but you stated this would not be done. Alternatively, you stated that these problems might be resolved by designating NJDEP as the "lead agency" pursuant to subpart J of the NCP, specifically Section 300.68. As we discussed, Section 300.68 does apply to the situation at issue, i.e. as an alternative to fund-financed remedial action, the lead agency (NJDEP) is seeking a voluntary cooperative agreement for conduct of and payment for the RI/FS.

Walter E. Mugdan  
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It would appear that designation by U.S. EPA Region II of NJDEP as "lead agency" pursuant to Section 300.68 of the NCP would satisfy the concerns which we have raised.

In addition to the foregoing, we discussed the timing aspects of this matter. Region II's letter of September 19, 1984, calls for a response by September 26, 1984. You stated that the discussions at our meeting constituted a verbal response. In addition, a copy of our formal response letter is attached hereto.

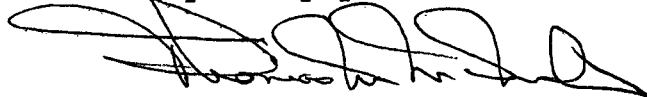
Finally, I stated that while I felt the parties were very close to finalizing the Stipulation, the mechanics of making final language changes and moving the document through the various corporate and governmental bureaucracies would take, as a practical matter, several more weeks. You stated that you felt something could probably be worked out.

Late yesterday afternoon I was advised by NJDEP that the timing issue may become a major stumbling block. Specifically, I was advised that if the Stipulation is not signed by October 15, 1984, then a fund-financed RI/FS will proceed, to the exclusion of the cooperative, industry-financed RI/FS presently on the verge of execution.

While we understand end-of-the-fiscal-year constraints, we view an eleventh-hour cut-off of negotiations as in no one's best interest. We appear to be on the eve of agreement. The problem to be studied is more scientifically complex and geographically extensive than at any other CERCLA site of which I am aware. The Committee contemplated by the Stipulation (at the NJDEP's insistence) reflects an innovative, first-of-its-kind approach, and thus has been more time-consuming to negotiate.

Velsicol will do its part to meet the October 15 deadline. We trust that arbitrary responses to unavoidable delays will not occur.

Very truly yours,



Thomas M. McMahon

TMM/nd

cc: Ronald Heksch	Gerard Burke
James Stanley	Edward Laird
Lorraine Teleky	Charles Hanson
Frederick Mueller	Richard Denney
Frederick Ziegler	

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September 26, 1984

John V. Czapor  
Site Investigation and  
Compliance Branch  
Emergency and Remedial  
Response Division  
U.S. Environmental Protection  
Agency  
26 Federal Plaza  
New York, New York 10278

Re: Ventron/Velsicol  
Woodridge Borough

Dear Mr. Czapor:

We represent Velsicol Chemical Corporation. This is in response to your letter of September 19, 1984, which was received by Velsicol on September 24.

On September 25 I met with Walter Mugdan of Region II and provided an oral response to your letter.

Velsicol is on the verge of finalizing an agreement with NJDEP to cooperatively perform an RI/FS. You have been previously provided with both a copy of the draft agreement (Stipulation) as well as the Scope of Work for the RI/FS.

We expect to finalize the agreement within the next several months. In the meantime, Velsicol has already voluntarily devoted considerable manpower and dollars to the design of the study.

John V. Czapor  
September 26, 1984  
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Nothing herein shall be construed as an admission  
with respect to any legal or factual issue.

Very truly yours,

Thomas M. McMahon

TMM/nd

cc: Ronald Heksch	Gerard Burke
James Stanley	Edward Laird
Lorraine Teleky	Charles Hanson
Frederick Mueller	Richard Denney
Frederick Ziegler	

CERCLA ENFORCEMENT PROTOCOL

This Protocol provides a framework for the relationship between the U.S. Environmental Protection Agency, Region II ("EPA"), and the New York Department of Environmental Conservation ("DEC") with regard to enforcement actions brought under the federal Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), or comparable State law, concerning hazardous substance release sites in New York.

- A. Enforcement Liaison. Both DEP and EPA will identify one individual who will act as the Enforcement Liaison for CERCLA matters. Because of the Liaison's role in, e.g., information exchange decisions (see below), this individual will be an attorney. In all formal communications pursuant to this protocol, the Enforcement Liaison will be responsible for ensuring that such communication include or address the comments of all interested elements of the Liaison's agency, including both legal and technical staff. (In addition, most NPL sites will have both legal and technical staff assigned, who may be in regular communication with their counterparts in the other agency.) Each agency may also designate an alternate Enforcement Liaison.
- B. Site Classification. Within 60 days after EPA has proposed that a site be included on the National Priorities List ("NPL") published pursuant to CERCLA, the Enforcement Liaisons will hold a meeting together with other appropriate agency personnel at which each site will be placed into one of two action groups: Remedial Track, or Enforcement Track; and each site will be placed into one of two lead agency classifications: Federal or State. These classifications may be changed from time-to-time as circumstances change; such changes will be effected by the mutual agreement of the appropriate personnel in both agencies.
- C. Responsibility. Each agency will have the primary responsibility to ensure that enforcement actions concerning sites for which it has the lead role are developed and pursued in a timely manner. EPA's Superfund Consolidated Accomplishments Plan ("SCAP") will provide annual quarter-by-quarter projections of Federal enforcement activities. DEC will prepare similar projections for State activities.
- D. Regular Meetings. Appropriate representatives of both agencies will meet at least quarterly to discuss issues arising under this protocol, and other enforcement matters including site classification changes, changes to the SCAP, and the status of enforcement activities.

- E. Information Exchange. Each agency will endeavor to keep the other fully informed of significant developments in its Enforcement cases. All data and documents in each agency's site files which touch upon the matters relevant to the site or the enforcement action will be made available upon request to the other agency. Internal memoranda addressing issues of enforcement strategy may be excepted from this exchange, but only after review by the Enforcement Liaison, and after discussion by such Liaison with his counterpart in the other agency.

Both agencies recognize that such exchange of data may result in undesired disclosure of one agency's documents through a Freedom of Information Act or discovery request made to the other agency. This may occur because the two agencies have different rules and guidelines governing such disclosure. One agency's Enforcement Liaison may decide, after discussion with his counterpart in the other agency, to withhold certain documents from the other agency if the Liaison has determined that transmission of such documents would likely result in premature disclosure which would be adverse to his agency's litigation interests.

Such a decision will be the exception, not the rule. Moreover, even though documents may not be exchanged in such a circumstance, there will still be a full and free exchange of information between the agencies through conversations and/or inspection of the documents. In such a case, the other agency will take care not to transcribe the sensitive information in such a way as to render it subject to premature disclosure.

F. Settlements.

- a. As a general principle, settlements of enforcement cases will be bilateral rather than trilateral; that is, only one governmental agency, not both, will be a signatory to the settlement agreement. Exceptions to this policy will be arranged, as necessary, through the Enforcement Liaisons and other appropriate personnel.
- b. When proposing to settle an enforcement action, each agency will provide the other with an opportunity to review the draft settlement document. The draft will be forwarded from the Enforcement Liaison to his/her counterpart with a copy to one designated program office contact. Usually at least thirty calendar days will be provided to the other agency for such review. In cases where there is a legitimate requirement for more expedited review, a shorter time period may be established; such situations will be the exception rather than the rule, and will not provide for less than seven calendar days (except in cases of bona fide emergencies). The Enforcement Liaisons will agree upon the appropriate time period.



- c. The reviewing agency will make a good faith effort, within the time period allotted, to identify any significant perceived shortcomings with the draft settlement document.\* These comments may be transmitted to the originating agency verbally or in writing. If they are transmitted in writing, such communication will be over the signature of the Enforcement Liaison and will incorporate the comments of all concerned elements of the reviewing agency.

The originating agency will consider the comments and advise the reviewing agency whether or not the recommended changes will be made. If the originating agency does not intend to adopt a recommended change, and the reviewing agency considers the matter to be of sufficient importance to warrant further discussion, the Enforcement Liaisons, together with other appropriate personnel, will discuss the outstanding issues in dispute in an effort to resolve the differences of opinion.

G. Review of Submissions from Responsible Parties.

- a. As a general principle, submissions by responsible parties required pursuant to settlements of enforcement actions for review and approval by the lead agency, will be provided to the other agency for review. The submission will be forwarded from the Enforcement Liaison to his counterpart, with a copy to one designated program office contact. Unless the document pursuant to which the submission is made specifies otherwise, at least twenty-one calendar days will be provided to the other agency for such review. (In cases where there is a legitimate requirement for more expedited review, a shorter time period may be established, but such situations will be the exception rather than the rule, and will not be less than seven calendar days except in cases of true emergencies. The Enforcement Liaisons will agree upon the appropriate time period.)
- b. The reviewing agency will make a good faith effort, within the time period allotted, to identify any significant perceived shortcomings of the submission.\* These comments may be transmitted to the lead agency verbally or in writing. If they are transmitted in writing, such communication

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\*Both agencies recognize that a completely thorough and detailed review may not always be possible within the allotted time period. For this reason the reviewing agency does not, in deference to the lead agency's role in the enforcement process, waive its rights to take any necessary and appropriate response or enforcement action at a CERCLA site which it may be authorized under law to take. Nevertheless, such action would be the exception, not the rule, and will only be taken after thorough discussion between the Enforcement Liaisons and other appropriate personnel.

will be over the signature of the Enforcement Liaison and will incorporate the comments of all concerned elements of the reviewing agency.

The originating agency will consider the comments and advise the reviewing agency whether or not the responsible party will be required to make the recommended changes. If the originating agency does not intend to adopt a recommended change, and the reviewing agency considers the matter to be of sufficient importance to warrant further discussion, the Enforcement Liaisons, together with other appropriate personnel, will discuss the outstanding issues in dispute in an effort to resolve the differences of opinion.

- H. General Approach to Reviews. Both agencies agree that comments made during the various review processes provided for herein should focus on significant, substantive issues rather than stylistic concerns. Both agencies will endeavor to limit their comments to items of genuine significance and substantial concern.

Both agencies agree that, notwithstanding the provisions of this protocol establishing routine procedures and time periods for carrying out required reviews, the enforcement program will be best served by informal contacts between the legal and program staff of both agencies as matters develop and key issues arise, and such contacts are strongly encouraged.